

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NICHOLAS W. NOVAK,

Plaintiff,

Case No. 22-cv-10315

Honorable Linda V. Parker

v.

CITY OF MADISON HEIGHTS, et al.,

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
SEPTEMBER 19, 2023 REPORT AND RECOMMENDATION,
DISMISSING THIS MATTER PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 41(b) AND FINDING MOOT DEFENDANTS'
PENDING MOTION**

On February 15, 2022, Plaintiff commenced this lawsuit against Defendants State of Michigan, the City of Madison Heights, its police department, and several of its police officers, and Texas Roadhouse. (ECF No. 1.) The State of Michigan and Texas Roadhouse subsequently were dismissed pursuant to decisions on dispositive motions. (*See* ECF Nos. 29, 31.) The City of Madison Heights Defendants subsequently filed a motion for summary judgment. (ECF No. 43.) The matter has been assigned to Magistrate Judge Anthony P. Patti for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 14.)

On September 19, 2023, Magistrate Judge Patti issued a report and recommendation (“R&R”) recommending that the Court dismiss the matter pursuant to Federal Rule of Civil Procedure 41(b) and, therefore, deem moot the pending dispositive motion. (ECF No. 46.) Magistrate Judge Patti bases his recommendation on Plaintiff’s failure to respond to the motion, despite being ordered to do so (*see* ECF No. 44), failure to respond to a show cause order (ECF No. 45), and lack of action in the matter since filing a more definite statement on October 28, 2022 (ECF No. 30).

At the conclusion of his R&R, Magistrate Judge Patti advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (ECF No. 46 at PageID 666-67.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.* at PageID 666.) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Patti. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that this matter is **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b).

IT IS FURTHER ORDERED that the motion for summary judgment (ECF No. 43) is **DENIED AS MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: December 5, 2023

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, December 5, 2023, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager